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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,165	04/16/2004	David Carroll Challener	RPS920030239US2	2667

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EXAMINER
PARTHASARATHY, PRAMILA

ART UNIT	PAPER NUMBER
2136	

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09/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *16 April 2004*.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-33* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-33* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some *   c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date *4/16/2004*.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   This action is in response to the communication 04/16/2004. Preliminary

amendments were filed. Claims 1 – 33 are currently pending.

Information Disclosure Statement

2.   An initialed and dated copy of Applicant's IDS form 1449 is attached to the Office

action.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the
unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees.   A nonstatutory
obviousness-type double patenting rejection is appropriate where the conflicting claims
are not identical, but at least one examined application claim is not patentably distinct
from the reference claim(s) because the examined application claim is either anticipated
by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140
F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29
USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.
1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422
F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163
USPQ 644 (CCPA 1969).
A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d)
may be used to overcome an actual or provisional rejection based on a nonstatutory
double patenting ground provided the conflicting application or patent either is shown to
be commonly owned with this application, or claims an invention made as a result of
activities undertaken within the scope of a joint research agreement.
Effective January 1, 1994, a registered attorney or agent of record may sign a
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with
37 CFR 3.73(b).

3.   Claims 1 – 33 are rejected on the ground of nonstatutory obviousness-type

double patenting as being unpatentable over claims 1 – 18 of U.S. Patent No.

6,526,507. Although the conflicting claims are not identical, they are not patentably

distinct from each other because the instant case, all elements of claims 1 – 33

correspond to the claims of 1 –18 of the patent claims, except in the instant claims the

elements "waking up the client computer with a Wake-On-LAN (WOL) signal, the WOL

signal being included in a packet from the fix server"" is referred in the patent claims as

"... client computer system receiving a wake network packet ... said client computer

system powers-on, only in response to authenticated wake network packets". Patent

claims recite "said client computer system includes a network adapter and further

comprising the step of establishing an encryption processor within said network adapter

for determining if said received wake network packet is a valid wake network packet"

which encompasses the instant application claims "utilizing a service processor in the

client computer to reconfigure a Network Interface Card (NIC) driver, wherein the NIC is

configured to communicate ...". Thus patent claims anticipate the instant claims.

Claims of the instant application are anticipated by patent claims in that the

patent claims contains all the limitations of the instant application. Claims of the instant

application therefore is not patentably distinct from the earlier patent claims and as such

are unpatentable for obvious-type double patenting *(In re Goodman (CAFC) 29*

USPQ2d 2010 (12/3/1993).

4.   Claims 1 – 33 rejected on the ground of nonstatutory obviousness-type double

patenting as being unpatentable over amended claims 1 – 36 of copending application

10/848,796. Although the conflicting claims are not identical, they are not patentably

distinct from each other because the instant case, all elements of claims 1 – 33

correspond to the amended claims of 1 – 36 of the copending application, except in the

instant claims the elements "configuring a network interface of a client computer to communicate only with a fix server that can supply a software fix to the client computer;" and "receiving from the fix server the software fix" are referred in the copending claims as "establishing an exclusive network connection between the client and the fix server" and "receiving the software fix from the fix server". Copending claims recite "installing the software fix on the client" and "wherein said reception and installation are automatically forced on the client without user intervention" which encompasses the instant application claims "wherein the software fix is automatically forced on the client computer to be received and applied on the client without a user intervention". Thus copending application claims anticipates the instant claims.

Claims of the instant application are anticipated by patent claims in that the patent claims contains all the limitations of the instant application. Claims of the instant application therefore is not patentably distinct from the earlier patent claims and as such are unpatentable for obvious-type double patenting *(In re Goodman (CAFC) 29 USPQ2d 2010 (12/3/1993).*

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5.   Claims 1 – 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Gluck

et al. (US Patent 5,948,104).

6.   As per Claims 1, 18, 20, 26, 31 and 33, Gluck teaches "configuring a network

interface of a client computer to communicate only with a fix server that can supply a

software fix to the client computer; and

receiving from the fix server the software fix, wherein the client computer

communicates only with the fix server when a determination is made that the client

computer has not previously received the software fix" (Column 4 lines 5 – 56).

7.   As per Claims 6, 7, 10, 25 and 30, Gluck teaches "a fix detector which discerns

an offer for a software fix from a fix server;

an isolator which is operatively coupled to said isolator and which transfers the

software fix from the fix server, and

a boot strap which is operatively coupled to said downloader and which reboots

the client computer after the software fix has been downloaded and executed; wherein

the client computer is reconnected to a network without restrictions after the software fix

is loaded and executed in the client computer" (Column 4 line 5 – Column 5 line 5).

8.   As per Claims 2, 3, 5, 11, 12, 13, 15, 16, 17 and 19, Gluck teaches "wherein the

software fix is automatically forced on the client computer to be received and applied on

the client computer without a user intervention" and "wherein the service processor

includes an agent for detecting the offer for the software fix" (Column 5 lines 4 – 51).

9.   As per Claim 4, Gluck teaches "waking up the client computer with a Wake-On-

LAN (WOL) signal, the WOL signal being included in a packet from the fix server, the

packet from the fix server including the address of the fix server" (Column 5 lines 4 –

51).

10.   As per Claims 8, 24 and 29, Gluck teaches "utilizing a service processor in the

client computer to reconfigure a Network Interface Card (NIC) driver, wherein the NIC is

configured to communicate only with the fix server to receive the software fix" (Column

5 lines 4 – 51).

11.   As per Claims 9 and 14, Gluck teaches "determining whether the client computer

has any of a virtual machine manager, a primary operating system, a secondary

operating system, and a service processor, and upon said determination, utilizing the

virtual machine manager to control the network interface if the client computer has a

virtual machine manager, or else utilizing the service processor to control the network

interface if the client computer has a service processor, or else utilizing the secondary

operating system to control the network interface if the client computer has a secondary

operating system, or else utilizing the primary operating system to control the network

interface" (Column 4 line 5 – Column 5 line 51).

12.   As per Claims 21, 22, 23, 27, 28 and 32, Gluck teaches "upon receiving the

software fix from the fix server, executing the software fix directly from the virtual

machine manager" (Column 5 lines 4 – 51).

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the

references as applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings in the art and are

applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO Form 892.

Applicant is urged to consider the references. However, the references should be evaluated by what they suggest to one versed in the art, rather than by their specific disclosure. If applicants are aware of any better prior art than those are cited, they are required to bring the prior art to the attention of the examiner.
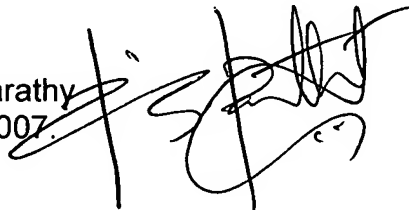

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pramila Parthasarathy whose telephone number is 571-272-3866. The examiner can normally be reached on 8:00a.m. to 5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Moazzami can be reached on 571-272-4195. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pramila Parthasarathy
September 13, 2007.